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Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Metris Companies Inc. Comments on the Rules and Regulations Implementing
the Telephone Consumer Protection Act of 1991

Docket Numbers: CG 02-278
CC 92-90

Ladies and Gentlemen:

Metris Companies Inc. ("Metris") appreciates the opportunity to comment on the Federal Communications Commission's ("FCC" or "the Commission") proposed rulemaking on further rules to carry out congressional directives in the Telephone Consumer Protection Act of 1991 ("TCPA"). Metris has a significant interest in how our customers and our operations would be affected by the contemplated changes of the Proposed Rule.

I. INTRODUCTION

Metris is one of the nation's leading providers of financial products and services. The company issues credit cards through its wholly owned subsidiary, Direct Merchants Credit Card Bank, N.A. ("DMB"), the 10th largest bankcard issuer in the United States. Through its enhancement services companies (hereinafter collectively "ES"), Metris also offers consumers a comprehensive array of value-added products, such as credit protection, extended service plans, and membership clubs. The company is publicly traded on the New York Stock Exchange (NYSE:MXT) and has been listed three years in a row as one of *Fortune Magazine's* 100 fastest-growing companies. Metris has grown its business by focusing on creditworthy, yet underserved markets.

Essential to our business model is the use of telemarketers in promoting our ES and credit products. Our success in providing these products to DMB customers has encouraged other credit card lenders to partner with Metris to provide the same services to their credit card customers. Through these partnerships, we have provided ES products to the customers of seven of the 10 largest card issuers in the country. We use telemarketing because it is a cost-effective, interactive method of promoting our products and improving customer service.

At Metris, we strive to provide superior customer service and security. Accordingly, we are very concerned about the potential for abusive and deceptive telemarketing practices and we work to ensure customer privacy. Our business model protects customers from deceptive practices in accordance with all applicable laws and regulations. In most instances, we provide protections beyond the statutory and regulatory burdens.

II. BACKGROUND

To better understand our viewpoint on the Proposed Rule, it is instructive to understand how our operations work. Metris is the parent company of DMB, an OCC-chartered national bank, and for our ES division. Our credit cards are issued by DMB. As a national bank, DMB is governed by the privacy provisions of the Gramm-Leach-Bliley Act (“GLB”). 15 U.S.C. §§ 6801-6810. ES also falls within the definition of a “financial institution” under GLB.

DMB utilizes telemarketing as one method of marketing its credit products to consumers. The above-mentioned specific concerns regarding inbound calls and the predictive dialers are applicable to the telemarketing of DMB’s credit products. DMB already complies with all applicable laws and regulations regarding credit offers, including but not limited to the Truth in Lending Act and Regulation Z, as well as the TCPA when telemarketing credit products.

ES contracts with telemarketing companies to market the ES products to customers over the phone. It is important to note that all calls initiated by ES using reference numbers for billing purposes are made to existing customers of DMB or other partner companies. The telemarketers then call the customers, complying with all the disclosures and restrictions of the TCPA and other laws. Once the customer agrees to purchase the product or service, the sales representative goes through an express verifiable consent procedure with the customer that is always digitally recorded and retained for four years. The procedure requires that the customer give an affirmative vocal “yes” to purchasing the product or service and a separate affirmative “yes” to having the product billed to his or her DMB credit card (or the card of the partner institution).¹ In this process, the customer must also confirm his or her understanding of the price and the terms of cancellation and the billing address on the credit card account that is being billed.

After sales are made, 100 percent of them are reviewed by a separate quality-control verifier within the telemarketing company for compliance with our express verifiable authorization procedure. Sales that meet the standards that we set are then sent to ES with the customer’s identification number. ES then completes the sales by providing the sales information and identification numbers to DMB or the partner institutions. To provide another level of consumer protection, ES listens to and verifies a statistically valid representative sample of the recorded sales calls on an ongoing basis to ensure that the telemarketers we use are following our strict express verifiable authorization procedures.

III. DISCUSSION

We urge the Commission to adopt a rule that adequately balances consumer and business concerns. We believe a single do-not-call list which 1) provides a uniform national standard for compliance; and 2) allows telephonic contact to consumers with whom the caller has a preexisting business relationship would benefit both consumers and businesses. As you consider clarification or adoption of existing rules implementing the TCPA, we believe the following principles should be weighed heavily.

¹ Telemarketing scripts include language such as, “I just want to confirm we will be charging a membership fee of (X) for one year of service on your (Card brand, card type) account, unless you call to cancel. Is this OK?” WAIT FOR RESPONSE. MUST BE A POSITIVE “YES.”

A. A National Do-Not-Call List Must Preempt Inconsistent State Law

Twenty-eight states have enacted do-not-call laws to date. In every instance, the registries have distinct rules, fees and penalties. Without preemption of inconsistent state law, a national do-not-call rule would impose yet another registry and further complicate the process of determining which consumers have opted out of telemarketing.

In addition to maintaining our own do-not-call databases under the current regulations, we already have to examine multiple state databases with different information and inconsistent formats just to determine whether we can make a call to an individual. As explained above, our ES division contacts only existing customers of DMB and our other partners. We currently maintain a do-not-call registry for these customers who do not want to be contacted by phone pursuant to the privacy provisions of GLB and other laws. We are also a member of the Direct Marketers Association (“DMA”) and participate in the DMA do-not-call registry. Thus, before we initiate a call, we must check that the customer is not on our do-not-call list; we then must check that the person is not on the DMA list; then we must make sure that we are complying with the applicable state list; and only then can the call be made. A single centralized list with the exceptions that we have proposed would ease this burdensome process significantly.

If the Federal Trade Commission implements its proposed list, it would be yet another layer in the increasingly difficult world of do-not-call compliance. The Proposed Rule should not establish another do-not-call list without requiring uniformity for state do-not-call requirements.

B. A National Do-Not-Call List Must Have Appropriate Exemptions for Pre-existing Customer Relationships

All but one state law recognizes the importance of allowing a business to contact its own customers over the phone, for competitive customer service and for the opportunity to offer those customers different or enhanced services. This exception should extend to joint marketing agreements where Company A offers goods or services directly to the customers of Company B on Company B’s behalf. This allows smaller companies to offer the same types of products as larger companies at competitive prices.

To adequately protect consumers who do not wish to be called by businesses with whom they have existing business relationships, they should continue to be allowed to be placed on company-specific do-not-call lists. This way, a consumer who does not wish to be contacted through telemarketing could be placed on one national list and severely decrease calling in short order. Telemarketing could be eliminated altogether for that consumer through use of company-specific do-not-call lists.

A national do-not-call rule should recognize that when someone calls to offer a product someone wants, the consumer views it as a benefit. When someone offers something that is of no use—or calls during an inconvenient time—the consumer views it as a nuisance. It is for this reason that the existing business relationship exception is so important. We are very careful about the products we offer to our customers. If we turn a customer off by calling him or her, we recognize that we may lose that customer.

C. A National Do-Not-Call List Must Have Adequate Lead Time for Businesses to Download the List and Comply

Call campaigns often take several months to implement and complete. A national list must be updated reasonably frequently to reflect the desires of the consumer, but businesses should not have to be

constantly updating new lists, or waiting for a new list to come out before a sales campaign begins. A national list should have no more than quarterly updates. When a consumer places his name on a list, he should be told that his name will appear on the list as of a particular date. Once a new list becomes available, companies should be given as much lead time as possible—45 days at a minimum—to “scrub” new names from calling lists. Too frequent updates of the list or too short compliance grace periods will impose unreasonable burdens on businesses.

D. Names Should Automatically Expire from the List After Two Years

The average annual telephonic turnover is 20 percent. This means that every year a national do-not-call list will become 20 percent inaccurate. After two years that list is 40 percent inaccurate. Consumers should re-register for the national list every two years to maintain the integrity of the do-not-call list.

E. Predictive Dialers are a Useful Tool if Used Responsibly

The use of predictive dialers increases our efficiency and lowers our costs substantially. It is an essential tool that allows the industry to employ more than three million people throughout this country. The DMA guidelines set a maximum acceptable abandonment rate of 5 percent. As a member of DMA, Metris requires that the telemarketing companies it hires operate within these guidelines. There is consensus within the industry that further lowering the abandonment rate results in a substantial loss of efficiency.

Metris would welcome the opportunity to work with the Commission, and trade and consumers groups, to examine possible solutions to the problems caused by abandoned calls. The Commission asked for specific comment regarding some suggested approaches. Metris agrees that one way to alleviate some of the consumer concerns is to limit the use of predictive dialers only to those telemarketers that transmit meaningful Caller ID information, including a number that the consumer could use to return the call. Another possible solution is to allow a business to play a tape-recorded message when a call is placed where there is a shortage of available telemarketing agents. The use of such a message could be limited to some maximum percentage of calls (*e.g.*, 5 percent). One of the main problems with this approach, however, is that some states already prohibit the use of tape-recorded messages in telemarketing calls. These laws would have to be preempted for this exception if this alteration were to succeed.

F. Time of Day Calling Restrictions Should Have One National Standard

Just as it is difficult to comply with multiple do-not-call rules in multiple states, it is increasingly difficult to comply with multiple time of day calling restrictions. We believe that the Commission should adopt one national time of day calling standard that applies to calls to all states. Obviously, the time zone in that state would need to be observed. One national standard would protect legitimate business from running afoul of multiple and inconsistent state rules.

G. Adequate Information Is Necessary to Investigate Telemarketing Complaints

An ongoing difficulty for legitimate businesses who in good faith attempt to comply with multiple do-not-call lists is that complaints received often do not have enough information for the company to adequately investigate what happened. Complaints should require the full name and address of the caller, an accurate call-back number and a full description of the incident. Without this information it is often impossible to track down whether the event occurred and to adjust our procedures, if necessary, to prevent similar incidents in the future.

IV. CONCLUSION

Metris supports the concept of a national do-not-call list, as long as it preempts inconsistent state law, has an exception for preexisting business relationships, and has a reasonable duration for consumers who ask to be placed on the list. The telemarketing industry, consumer groups, state law enforcement organizations and the Commission should be able to craft an effective centralized solution to the stated concerns.

The establishment of a national do-not-call registry without appropriate exemptions for preexisting customer relationships and without preemptive authority restricts our ability to maintain a high level of customer service and subjects us to a multiplicity of inconsistent and burdensome state regulation in our national interstate customer relationships.

We appreciate the opportunity to comment and look forward to working with Commission. Please contact Metris Director of Government Affairs and Legislative Counsel Danielle Fagre at 952-417-5705 with any questions regarding this comment.

Sincerely,

Ronald N. Zebeck
Chairman and Chief Executive Officer
Metris Companies Inc.